IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 423 OF 2005
ALONGWITH
CRIMINAL WRIT PETITION NO. 424 OF 2005

Dr. R.N. Majumdar ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

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Mr. Rajendra Sarwankar, Advocate i/b M/s. Tijoriwala & Co. a/w Mr. Tushar Tijoriwala and Ms. Sheetal Chhabria Advocates for Petitioner.

Mr. Mr. B.A. D'lima i/b M/s. D'Lima & Associates, Advocate for Respondent No.2.

Mr. S.R. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 21ST JULY, 2005

P. C.:-

1. Heard both sides.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case No. 742/S/2002 and 889/S/2002 which are pending in the Court of learned Additional Chief Metropolitan Magistrate, 12th Court at Bandra, Mumbai. In the said cases, process has been issued against the petitioner under Section 138 and 141(1) of Negotiable Instruments Act.

3. The petitioner had preferred an application for

recall of process before the learned Magistrate. The said application came to be rejected by the learned Magistrate in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors. reported in 2004 (4) Mh.L.J. 274**. In view of the said decision, it is clear that the Magistrate does not have power to recall the process, hence, in such case no fault can be found with the order of the learned Magistrate in rejecting the application for recall of process.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No. 550 of 2005, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the petitioner to prefer revision before the concerned Sessions Court. The learned advocate for the petitioner states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for

a period of four weeks from today in respect of the present petitioner only. The learned advocate for the respondent i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties. It is made clear that the revision would be preferred in respect of the order of the Magistrate issuing process and not in respect of the order of Magistrate rejecting the application for recall of process.

7. Petitions are disposed of.

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